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Sent Via Email: reg-comm@fca.gov

April 20, 2015

Mr. Barry F. Mardock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
McLean, VA 22102-5090

Re: Mergers, Consolidations and Charter Amendments of Banks or Associations; Vol. 80, No. 32; Pg 2614, Jan 20, 2015; 12 CFR Part 611

Dear Mr. Mardock:

The Independent Community Bankers of America appreciates the opportunity to comment on the proposed rule (PR) issued by the Farm Credit Administration (FCA). We are writing this letter on behalf of the nation's community banks¹ as a number of these banks, particularly in rural areas, could be impacted by the future mergers and consolidations within the FCS.

ICBA's Views

ICBA supports provisions of the PR intended to protect FCS borrowers from potential coercion by FCS executives desiring a merger against the wishes of member-owners. However, we believe FCA's rules for mergers should reflect the FCA's requirements for termination of System institutions as noted below.

For example, ICBA supports requiring that only an independent third party be authorized to validate ballots as this would provide added security and confidentiality over the voting process on an issue that is not routinely presented to individual stockholders.

¹ The Independent Community Bankers of America®, the nation's voice for 6,400 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. ICBA members operate 24,000 locations nationwide, employ 300,000 Americans and hold \$1.4 trillion in assets, \$1.1 trillion in deposits, and \$900 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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We also agree with FCA that the stockholder list provided to a stockholder wishing to file a reconsideration petition be the voting record date list developed for the stockholder vote on the proposed plan of merger as that would be the most updated list and maximizes the ability of stockholders to file such a petition.

Need to Make Regulations Consistent

However, the PR appears to be less rigorous than FCA's rules for the termination of an association even though a merger would be a kind of termination of one of the two existing entities. Therefore, ICBA believes this PR should also require any merger or consolidation to require three votes of the FCS institutions' boards; should be posted online and available to the public; should require posting of dissenting board members opinions; should require conducting independent economic analysis and environmental impact statements and should require, at minimum, a quorum of 30 percent of stockholders voting in person or by proxy.

Several Board Votes Necessary

Just as the FCA argued in its termination rule that: "We believe it is important and essential for the terminating board to validate its decision at these critical junctures and demonstrate continued support for the termination," the same rationale should apply to the FCA's merger and consolidation regulations. The termination rule requires a terminating institution's board to vote three separate times. The same requirements should be imposed on both of the merging or consolidating institutions.

Independent Economic Analysis and Studies

Similarly, just as FCA stated in its termination rule, "We proposed a new section providing that we may require a terminating institution to obtain independent analyses or studies of and rulings on matters related to the proposed termination," mergers and consolidations should also require such independent, outside analysis. This should be a requirement for any FCS merger or consolidation given that mergers and consolidations are actual events occurring on a somewhat frequent basis for FCS institutions. In contrast, there has only been one actual termination within the FCS.

Various farm groups and organizations (see below for one example) are concerned about further consolidation within the agricultural sector. Additionally, even FCS representatives argued for additional economic studies and analysis as part of the termination process, arguing in that rulemaking, as noted by FCA:

"System commenters supported the FCA's proposal and encouraged FCA to require studies as needed. They asserted that the facts and circumstances of any particular termination request must be carefully evaluated and that an independent analysis of various issues raised by the request may be appropriate, including the impact on System-wide debt holders, the cost and credit rating of System-wide debt securities, tax aspects of the transaction, the valuation of dissenters' rights, the impact on other System institutions, and all the costs associated with either

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chartering a new institution to serve the applicable territory or amending the charters of other System institutions to serve it.”

We believe similar logic holds true for mergers and consolidations. Since FCA finalized this approach in the termination rule, the same logic should be incorporated into this rule unless those making such arguments for the termination rule were simply being duplicitous and thus not credible. ICBA strongly urges FCA to ensure all mergers and consolidations require additional economic impact statements and studies since mergers have become frequent occurrences within FCS.

It is also important for such studies and analysis to detail the impact that a newly merged FCS entity would have on the ability of other financial institutions (OFIs) to obtain funding within the newly designated territory to ensure their cost of funds (COF) are not increased. FCA should ensure that any OFIs in the newly merged territory would not face a higher COF.

Public Transparency

ICBA also requests that FCA require the posting of documents related to mergers and consolidations online in a manner accessible to the public, just as FCA requires for terminations. In its final rule on terminations FCA stated:

“Proposed § 611.1216 provides that we may post on our Web site, or require a terminating institution to post on its Web site, documents related to the termination. Disclosure of the documents will, at an early stage in the termination process, enable equity holders and others to understand the structure and ramifications of the plan of termination . . . we expect the institution to post the board of directors' resolution on its Web site to commence the termination process, in addition to the notice to equity holders. We could require the posting of other documents such as charter documents of the successor institution or contracts entered into with a merger or acquisition partner. In addition, we could require the posting of the results of any special assessments, analyses, studies, and rulings. We stated that it was not our intention to require the posting of confidential information, and the terminating institution could request us to keep specific documents confidential.”

“The purpose of this provision is to ensure a broad dissemination of the significant termination documents to equity holders and the public . . . As for whether the information is on the FCA's Web site or the terminating institution's Web site, our intention is to ensure the availability of termination-related information.

ICBA believes the same requirements should be enforced for FCS mergers and consolidations. Further, ICBA urges FCA to ensure that one or more directors of a merging or consolidating institution may seek independent and/or legal advice on the merger or consolidation while receiving compensation for the cost of receiving such advice, just as provided for in FCA's termination rule (§ 611.1218(b)).

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Voting Requirements as Stringent as for Terminations

ICBA also strongly urges FCA to insist any mergers or consolidations require a quorum for stockholder approval of, at minimum, thirty percent of stockholders voting in person or by proxy on the initial merger proposal, as required in FCA's termination regulation. ICBA also requests FCA require informational meetings on mergers and consolidations for all impacted stockholders and a 60 day time period between such informational meetings and a vote on the pending merger and consolidation, similar to the termination rule.

Moratorium on Future Mergers and Consolidations

Separate from this proposed rule, ICBA believes the FCA should issue a halt to any further mergers and consolidations within the FCS as such mergers contradict the concept of locally oriented lenders serving farmers and ranchers. We note comments made by the National Farmers Union (NFU) during the FCA's secretive 'public' conference held last January, which was closed to the banking industry, on future mergers within the FCS.

Concepts the NFU supported included: 1) Implementation of a temporary moratorium on large agricultural mergers to provide Congress with time to review and strengthen current law; 2) Expanding the role of USDA to participate in and review proposed mergers in the ag sector and 3) Requiring economic and environmental impact statements detailing the impact on farmers, ranchers and consumers prior to approval. NFU also stated, "Consolidation of Farm Credit Institutions puts more distance between lenders and their clientele, which will inevitably create conflict . . . More distance could very likely result in more breakdowns in communication, more stress, and exacerbates problems that could otherwise be more easily solved or avoided."

FCA has allowed large agricultural mergers between associations and also between district Farm Credit Banks in recent years, resulting in a district bank (with direct lending powers to farmers and ranchers in certain areas) of over \$85 billion and growing. There needs to be a broader discussion of future mergers within FCS open to all members of the public including the banking sector. This discussion needs to take a real and sincere look at consolidation within the FCS and in rural America and the purpose of the discussion should NOT be a secretive attempt to lay the self-serving foundation for expanding the powers of the FCS. The FCS is a government sponsored enterprise with enormous tax and funding advantages over the private sector and it should not be allowed to siphon the best loans out of community bank portfolios, harming the ability of community banks to serve rural Americans and further fueling the consolidation of rural America.

Prohibit Multiple, Simultaneous Mergers

ICBA also urges FCA to remove any potential for more than two mergers/consolidations of district banks or mergers/consolidations of FCS associations during the same time period. Allowing mergers of three FCS entities at one time could result in significant consolidation of historical proportions that could have dramatic impact on the makeup and structure of the FCS.

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Allowing triple mergers or consolidations or even larger multiples of consolidations or mergers would allow unprecedented shifts of the FCS in ways Congress has never envisioned and allow internecine bidding wars for the takeover of FCS territories.

ICBA would also oppose any expansion of territories of the resulting merged or consolidated FCS institutions beyond the territories of the individual institutions pre-merger or pre-consolidation.

Conclusion

ICBA appreciates the opportunity to comment on this proposed rule. We request that FCA ensure the same requirements are applied to mergers and consolidations as are applied under FCA's termination regulation in all appropriate areas including the provisions noted above. This will ensure consistency between these regulations. ICBA also requests FCA ensure OFIs are not disadvantaged in any way in future mergers and consolidations. Finally, given the significant number of mergers and consolidations within the FCS, ICBA urges FCA to impose a moratorium on further mergers and consolidations so that this issue can be studied independent of System executives who may seek their own financial gain and/or personal agendas in lieu of acting in their stockholder's best interests.

Should you have further questions regarding these comments, please contact Mark Scanlan at 202-659-8111 or mark.scanlan@icba.org.

Sincerely,

Mark Scanlan

Mark Scanlan
Sr. Vice President
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